

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FRANKIE LEE WEATHERSPOON,

Petitioner,

v.

Case No. 2:04-cv-170
HON. R. ALLAN EDGAR

BARBARA BOUCHARD,

Respondent.

REPORT AND RECOMMENDATION

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. This petition was initially dismissed by the court as untimely. Petitioner appealed to the Sixth Circuit Court of Appeals, who held that Petitioner's application for habeas corpus relief was based on newly discovered evidence, which rendered the habeas corpus petition timely filed. The petition was then remanded to this court for further proceedings.

Petitioner has now filed a motion to hold this case in abeyance, claiming the existence of newly discovered evidence and asserting a desire to return to the state court to exhaust his claims on the new evidence. In his motion, Petitioner states that he recently received a letter from Orlando Weatherspoon, stating that he was forced to testify against Petitioner and indicating that Petitioner's sister, Orlando's mother, actually committed the crime. Petitioner claims that he has shown good cause for his failure to exhaust his claims prior to filing and that his new claims are not meritless. However, the undersigned notes that Petitioner has failed to support his claim of newly discovered evidence by offering a copy of the letter, or even specifying the date that the letter was authored or

that Petitioner received it. Therefore, the undersigned concludes that Petitioner has not sufficiently supported his claim of newly discovered evidence.

In summary, the undersigned recommends that Petitioner's motion to hold case in abeyance (docket #27) be denied.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within ten (10) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley

TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: August 18, 2006